

CDIAC

**CALIFORNIA
DEBT AND
INVESTMENT
ADVISORY
COMMISSION**

**SESSION THREE:
CURRENT PRACTICES FOR
DETERMINING GENERAL AND
SPECIAL BENEFIT**

Assessment District Laws

□ Municipal Improvement Act of 1913

(Streets & Highways Code 10000 et. seq.)

▣ Capital Projects

- Streets, drainage, sewer, water
- Electrical lines and conduits, street lights
- Seismic, fire safety and stations, transportation facilities and park improvements
- Land acquisition – easements

▣ Services

- Only what was funded by assessment
- Limited maintenance provision

▣ Issue bonds through Improvement Bond Act of 1915

Assessment District Laws

□ Landscaping and Lighting Act of 1972

(Streets & Highways Code 22500 et. seq.)

▣ Funds construction and maintenance of:

- Landscaped medians and parkways
- Parks
- Open Space
- Street lighting
- Traffic signals
- Graffiti removal on the above

Assessment District Laws

- **Benefit Assessment Act of 1982**
 - (Government Code 54703 et. seq.)
 - **Funds construction and maintenance of:**
 - Street improvements
 - Storm drain improvements
 - Street lighting

- **County Service Areas (CSA)**
 - **Specific services identified in CSA formation**

Assessment District Laws

□ Fire Suppression Act of 1987

(Government Code 50078 et. seq.)

- Funds operation and maintenance of fire suppression activities, including:
 - Vehicle acquisition and maintenance
 - Weed abatement
 - Firefighting personnel
- Cannot fund activities related to paramedic and/or emergency response services
- Only activities related to protection of property

Assessment District Laws

- Property and Business Improvement District Law of 1994 (Streets & Highways Code 36600 et. seq.)
 - ▣ Funds construction and maintenance of:
 - Parking facilities and sidewalks
 - Benches, booths, kiosks, etc.
 - Trash receptacles and public restrooms
 - Parks
 - Security
 - Rehabilitation and removal of structures

Assessments – Common Principles

- Charge on property for provision of public improvement or service
- Based on special benefit to affected properties
- Cannot fund general benefit
- Publicly-owned parcels may be subject to assessment
 - Must determine if they benefit and assess them accordingly
- Identify improvements, identify benefits, identify benefitting parcels

Assessments – Common Principles

- Prepare and submit Engineer's Report to support benefit finding and rationale for assessments
 - ▣ Improvements
 - ▣ Costs
 - ▣ Define benefits
 - ▣ Methodology
- Conduct ballot proceeding – lack of majority protest required for approval (majority approval)

Assessments – Common Approach

- Identify improvements to be constructed
 - Location
 - Type
- Determine cost for improvements
 - Which costs are eligible
 - Other costs related to improvements (right-of-way, design, permits, etc)
- Identify properties to be served by constructed improvements – proposed for inclusion
- Evaluate other properties (bordering, or otherwise benefitting)
- Evaluate benefitting properties with each improvement separately
- Define special benefits that improvements provide to affected properties
- Reminder: special benefit is over and above benefits conferred on the general public at large

Assessments – Common Approach

- Identify possible general benefits
 - Common example 1: road segment that also provides access to other property or through traffic
 - Common example 2: storm drain retention basin that catches flow from other neighborhoods or provides water quality enhancement
 - Discussion point: construction of that road may be condition for developing subject property. Does it benefit it solely, or some general benefit?
- Quantify general benefit
 - Example: use trip counts on road segment to determine the benefit to subject property, allocate cost accordingly
- General benefit must then be excluded from assessment
- Remaining special benefit can be allocated to benefitting properties

Assessments – Common Approach

- Develop equitable and reasonable methodology for allocating special benefit
- Strive for understandable methodology
- Account for future property subdivision – understanding of proposed developments
- Apportion specific costs to properties that receive special benefit
 - Can be different for various improvements – i.e. roads, sewer, water, storm drain, etc
- Assessments for parcels must be proportional to benefits received by that parcel
- Assessments may not exceed any parcels proportional benefit

Current Common Methods

Assessment Methodologies by Improvement Type

| Improvement Type | Common Enabling Act(s) | Unit of Measure | Special Benefits |
|---------------------------|------------------------------------|---|--|
| Landscaping | 1913 Act, 1972 Act, PBID | Equivalent Dwelling Units (EDUs), Frontage, Acreage | Specific Enhancement to Property Value, Aesthetics |
| Street Lighting | 1913 Act, 1972 Act, 1982 Act, PBID | Equivalent Dwelling Units (EDUs), Frontage, Acreage | Safety, Character & Vitality, Economic Enhancement, Enhanced Illumination, Proximity |
| Streets | 1913 Act, 1982 Act, PBID | EDUs, Frontage | Access to Property, Safety |
| Storm Drain | 1913 Act, 1982 Act, PBID | Impervious Area | Storm and Flood Protection |
| Parks | 1972 Act, PBID | EDUs, Employee Density | Proximity, Access to Green Spaces, Extension of Open Area |
| Sewer | 1913 Act, PBID | Connections, Peak Capacity | Occupancy, Health, Sanitation |
| Public Utilities | 1913 Act, PBID | EDUs, Frontage | View, Aesthetics, Safety, Reliable Connection |
| Security, Marketing, etc. | PBID | Acreage, Frontage, Building Size | Economic Enhancement |

A common Special Benefit was Condition of Development.

Note: 1913 Act is limited to providing maintenance for improvements constructed by the district.

1913 Act - Municipal Improvement Act of 1913 (S&H Code 10000 et. seq.)

1972 Act - Landscaping and Lighting Act of 1972 (S&H Code 22500 et. seq.)

1982 Act - Benefit Assessment Act of 1982 (GOV Code 54703 et. seq.)

PBID - Property and Business Improvement District Law of 1994 (S&H Code 36600 et. seq.)

Shifting Landscape

- More focus on addressing special and general benefit
- More scrutiny of general-type services: public safety (fire), park maintenance
- Difference in benefit vs. difference in cost
- Ensuring proportionality in assigning special benefit
- Impact on existing assessments – potential challenges
- Take extra care forming new assessments

Shifting Landscape

- Certain situations not suited for assessments
- Where other types of districts work
- Different standard of review for courts
- Create thorough administrative record
- Industry efforts and education
- Must be a methodology or basis, i.e. trip count, census, service radius, proximity, etc.

General and Special Benefit

- Must ensure special benefits are truly particular and distinct
- Must quantify special and general benefit – Silicon Valley, Beutz, Golden Hill
- Cost associated with general benefit cannot be included in assessment

More on Benefit

- All benefitting parcels must be assessed (Bonander)
- Benefit zones permitted only where there are distinct differences in benefit, ***not cost***
 - ▣ Variances in level of service
 - ▣ Variances in improvements provided,
 - ▣ Location, etc.

About the Engineer's Report

- Key information document
- Important Content
 - ▣ Special Benefit clearly defined
 - ▣ General Benefit discussed and quantified
 - ▣ Assessment methodology explained in detail
 - ▣ Exceptions and exemptions explained
 - ▣ Cost estimates
 - ▣ Plans & Specifications

About the Engineer's Report

- Important Content (continued)
 - ▣ Assessment diagram
 - ▣ Assessment roll
 - ▣ Principal amount of assessments
 - ▣ Total true value of parcels
 - ▣ Value to Lien Ratio - minimum 3:1 ratio required by The Special Assessment Investigation, Limitation and Majority Protest Act of 1931

Consider Before Balloting

- Carefully evaluate feasibility of increasing or imposing new assessments on existing properties
- Assessments, fees or taxes planned by other overlapping agencies
- Determine needs
 - Analyze extent, nature and location of improvements
 - Develop thorough budget, identify all revenue sources
 - Identify service requirements and capital replacement needs
- Consider ALL properties who might receive benefit

Consider Before Balloting

- Have a clear understanding of benefit
 - Clear nexus between properties and improvements/services
 - Account for general benefit, develop methodology accordingly
- Clear, concise, easy to understand materials
- Reasonable methodology
- Clear notice and ballot
- Take into account: political factors, public perception, values, support
 - Polling may help, talk to stakeholders – but be careful!!

Consider Before Balloting

- Evaluate potential alternatives
 - Level of General Fund subsidy
 - Consider value engineering to reduce cost
 - Consider alternative revenue mechanisms
 - Special Tax
 - Community Facilities District
 - Grants
 - Rule 20A for undergrounding utilities
 - Loans

Special Benefit – Downtown Pomona

PBID example

- Special Benefit
 - Analysis based on enhanced economic activities
 - Benefit specific to property types and uses; separate analysis needed for each
 - Services: security, streetscape maintenance, marketing & promotion
 - Assessments based upon street frontage, building size, lot size (40%, 40%, 20%)
- Special benefits were enhanced services providing for increased economic activity

Special Benefit – Downtown Pomona

PBID example

- Court found no fault with methodology – using several property characteristics, i.e. front footage, building size, parcel size
- Allowed discounting of assessments – as long as no other benefitted properties are assessed for more than proportionate special benefit
 - Discounts to non-profits
 - Discounts to residential
- Affirmed services provided by PBID afforded parcels a benefit that was particular and distinct

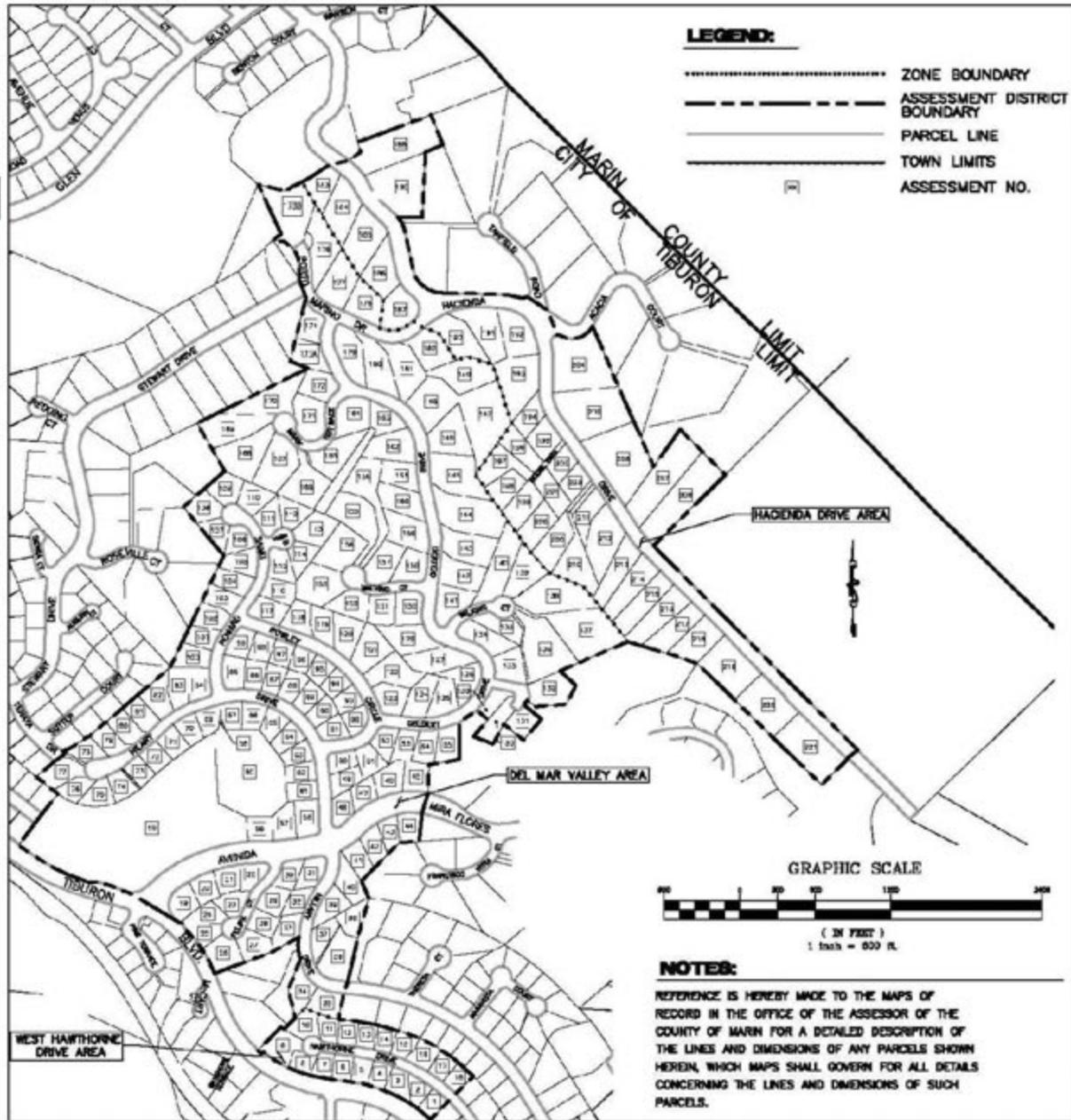
General Benefit – Downtown Pomona

PBID example

- General Benefit
 - ▣ Must be quantified and separated
 - ▣ Significant analysis utilizing benefit factors, parcel analysis and public survey statistics
 - ▣ Benefit evaluated both inside and outside district
 - ▣ Results identified a 1.70% general benefit conferred by PBID activities

Tiburon AD example

- Issues:
 - ▣ Challenge to components of utility undergrounding district – esp. proportionality, cost
 - ▣ 3 zones of benefit, one for each electrical subsystem
 - ▣ Each zone had different assessment based on cost of that electrical subsystem
 - ▣ Method of assessment identified several benefit factors
- Court Ruling:
 - ▣ Cost zones not allowed, zones must be based upon benefit only
 - ▣ All parcels benefitting must be included in district
 - ▣ Each parcel's proportionate special benefit must be based on cost of entire project
 - ▣ Court found no fault with methodology – special benefits identified in Engineer's Report were special, ok that special benefit was conferred equally
 - ▣ Court affirmed general enhancement of property value does not mean a benefit is general



Tiburon AD example

- Potential Solutions:
 - ▣ Create one uniform assessment
 - ▣ Identify varying benefits between the zones not related to the cost
 - ▣ Create 3 separate assessment districts

General Benefit Examples

- Roadway
 - Through traffic on arterial streets
- Street Lighting
 - Additional level of lighting required to light arterial street
- Parks
 - Recreational Programs
 - Events
 - Non-resident use

General Benefits

- Water and Sewer Treatment
 - ▣ Environmental Concerns
- Storm drainage
 - ▣ Reduced likelihood of flooding downstream of actual project
 - ▣ Improved water quality downstream (outfall)
- Fire Suppression
 - ▣ Air Quality
 - ▣ General Public Safety
- Landscaping
 - ▣ General Public at Large

Conclusions

- Existing assessments repaying bonded indebtedness unaffected
- New assessment districts must account for latest case law
- Special/general benefit requirements are more exacting
- Agencies should allow time for legal review of Engineer's Reports
- Important to track legal developments (numerous for assessments over past five years)
- Must define benefit zones by special benefit received, not cost
- Must take into account a parcel's proximity to the improvement
- Clear comprehensive administrative record – courts need to understand process, rationale

Questions?

